IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.869 OF 2006

United India Insurance Company
Limited. .. .. Petitioner

Versus

1. Mr.Shabbir M. Attarwala,
husband of the deceased.

2. Ms.Huzaifa B. Attarwala
aged 18 years, daughter of the
deceased.

3. Mr.Hansain S. Attarwala,
aged 15 years, son of the deceased.

4. Mr.Yanuappa Valiappa Chawan

5. The State of Maharashtra .. Respondents

Mr.S.G. Deshpande for petitioner.

Mr.M.B. Kotak for res.No.1.

Mr.V.P.Malvankar, AGP for res.No.5.

CORAM : H.L. GOKHALE &
J.H. BHATIA, JJ.

DATED : 5th July 2006

JUDGMENT : (Per J.H. Bhatia, J.)

1. Rule. By consent of the learned Counsel for the parties, Rule is made returnable forthwith.

2. Facts leading to the filing of this petition are briefly stated as follows:-

. A motor accident had taken place on 5th May 2003 wherein one Farida Shabbir, aged about 35 years, who was proceeding on her scooter, was knocked out by a Dumper and in that accident, the said Farida Shabbir died leaving behind her husband, one minor daughter and one minor son. They filed an application being Application No.1798 of 2003 before the Motor Accidents Claim Tribunal, Mumbai (hereinafter, for the sake of brevity, referred to as the "MACT"), seeking compensation. The offending vehicle / Dumper was owned by respondent No.4 and was insured with the petitioner-Insurance Company. In spite of service, respondent No.4 did not appear to contest the matter. The petitioner contested the petition by filing a Written Statement, whereby the petitioner also sought liberty under Section 170 of the Motor Vehicles Act, 1988 to take up all the possible defences as the matter was not defended by the owner or the driver of the vehicle. It is contended on behalf of the Insurance Company that the fitness certificate of the Dumper was valid only upto 31st March 2003 while the accident took place on 5th May 2003. At that time, the vehicle did not have any fitness certificate. It is further contended that the driver was holding a licence to drive a light motor vehicle and not a

Dumper which is a heavy motor vehicle and thus, there were violation of the important conditions of the Insurance Policy. The claim was also disputed on other grounds. On request of the Counsel for the claimants, who are respondent Nos.1 to 3 herein, the matter was placed before the Lok Adalat held on 10th April 2005. The Lok Adalat directed the Insurance Company to pay the amount of Rs.13,00,000/- as compensation to the claimants and also directed that the amount of Rs.4,00,000/- out of the said amount of Rs.13,00,000/-, be invested in the name of the mentally retarded child with a further direction that the guardian of the child would be entitled to take only interest thereon.

3. The Insurance Company has challenged the Award passed by the Lok Adalat mainly on the ground that the important defences are raised in this matter pertaining to the violation of the conditions of the Insurance Policy and in view of this, the Lok Adalat should not have passed the Award and the matter should have been referred back to the MACT for its decision on merits. It is further contended that there was no consent or settlement for payment of Rs.13,00,000/- as awarded by the Lok Adalat and the amount is

excessive. Therefore, the Award is liable to be set aside.

4. Heard Mr.Deshpande in support of this petition, Mr.Kotak for respondent No.1 and Mr.Malvankar, AGP for respondent No.5-State. None appears for respondent No.4 i.e. the owner of the vehicle.

5. Mr.Kotak, learned Counsel appearing for respondent No.1, vehemently contended that the Award of the Lok Adalat cannot be challenged by invoking Article 226 of the Constitution of India and judicial review cannot be invoked in such Awards. In support of his contention, he placed a reliance upon a judgment of the Supreme Court in the case of **Pt. Thomas vs. Thomas Job reported in (2005) 6 Supreme Court Cases page 478**. In that case, the Supreme Court relied upon a judgment in **Sailendra Narayan Bhanja Deo vs. State of Orissa reported in AIR 1956 SC 346**. In the **Sailendra's case** (supra), the Constitution Bench had held as follows:-

> " A judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises

its mind on a contested case."

In view of the aforesaid observations, the Supreme Court in paragraph 23 of the **Pt. Thomas's case (supra)** held as under:-

> " Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a court in a regular trial is, however, it is as equal and on a par with a decree on compromise and will have the same binding effect and be conclusive. Just as the decree passed on compromise cannot be challenged in a regular appeal, the award of the Lok Adalat, being akin to the same, cannot be challenged by any of the regular remedies available under law, including by invoking Article 226 of the Constitution and challenging the correctness of the award, on any ground. Judicial review cannot be invoked in such awards, **especially on the grounds as were raised in the revision petition**."
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> (Emphasis supplied)

It is material to note that in that case the judicial review was sought on grounds amounting to

a challenge to factual finding or appraisal of evidence. In the present case, it is not so.

6. Mr.Kotak also relied upon a judgment of the Supreme Court in the case of **National Insurance Co. Ltd. vs. Swaran Singh & ors. reported in 2004 Accidents Claims Journal I** in support of his contention that merely by taking the defence of breach of conditions concerning a driving licence, the Insurance Company cannot be allowed to avoid its liability. He contended that in view of this, the Insurance Company is liable to pay the amount of compensation as awarded by the Lok Adalat and it may be recovered from the insurer. It is material to note that in para-83 of the judgment the Apex Court spoke of minor breaches of licence conditions and that the inconsequential deviations should not lead to denial of benefits. In para-82 of the judgment, however, the Court has observed that the Tribunal has to decide as to whether the absence of correct licence was the main or contributing cause of the accident. The petitioner had to be given the opportunity for the same which has been denied in our case.

7. On perusal of the Award passed by the Lok

Adalat, we find that the learned Counsel appearing for the Insurance Company has clearly pointed out that the Insurance Company had taken the defence of breach of important conditions of Insurance policy because the driver was not having a driving licence for heavy vehicle and the vehicle was also not having a fitness certificate at the relevant time and in view of this, the Insurance Company is not liable to pay the compensation. It appears that after taking these objections, the learned Counsel stated that if the compensation was to be paid, it could be only Rs.6,28,000/-. However, the Lok Adalat awarded the amount of Rs.13,00,000/- as compensation. From this, it is clear that firstly the Insurance Company had taken important defences which were available to it and those defences could be decided only on merits, unless, of course, the Insurance Company would clearly not press those defences. There is nothing on record to show that the learned Counsel for the Insurance Company had not pressed those defences. Secondly, there appears to be no consent or settlement on the compensation amount as awarded by the Lok Adalat. Subject to the defences, the learned Counsel for the Insurance Company had conceded to pay the compensation to the tune of Rs.6,28,000/-. There is nothing to

show that the Insurance Company had agreed for Rs.13,00,000/-. Section 20(4) of the Legal Services Authorities Act, 1987 clearly provides that while determining any reference the Lok Adalat shall arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles. Sub-section (5) clearly provides that where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received. In the present case, there was no settlement or compromise on the amount of compensation i.e. Rs.13,00,000/- and if the claimants were not willing to accept the offer of Rs.6,28,000/- from the Insurance Company, the Lok Adalat should have returned the matter to the MACT, from which the reference was received. Without such consent or settlement, the Award could not have been passed. In view of this, we find that it is a fit case for judicial review under Article 226 of the Constitution of India.

8. It may be noted that in spite of the defences taken by the Insurance Company, its

Counsel had shown readiness to pay Rs.6,28,000/- by way of compensation. In view of this, we think that the Insurance Company should be directed to deposit the said amount with the MACT and the said amount may be invested in the Reserve Bank of India ("RBI" for short) Bonds with liberty to respondent No.1, the father of respondent No.2 and 3, to receive interest thereon from time to time during the pendency of the claim Application before the MACT.

9. In the circumstances aforesaid, the petition is allowed. The impugned Award dated 10th April 2005 passed by the Lok Adalat is hereby set aside. We remand the claim Application No.1798 of 2003 back to the MACT for its decision on merits in accordance with law. However, we direct the petitioner-Insurance Company to deposit the amount of Rs.6,28,000/- as compensation within four weeks with the MACT which shall invest the said amount in RBI Bonds pending the hearing and final disposal of the claim Application. Respondent No.1, the father of respondent Nos.2 and 3, shall be allowed to receive interest on the said amount from time to time. This shall be subject to the final result of the claim Application.

10. There shall be no order as to costs.

(H.L. GOKHALE, J.)

(J.H. BHATIA, J.)